

REMARKS

Claims 15-35 are pending. By this Amendment, claim 16 is amended.

Request for in person interview

As indicated in the Request for Interview submitted herewith, Applicant's attorney and a representative of Applicant hereby request an in-person interview of the above-referenced Application. It is believed that such an interview will permit Applicant to better explain the claimed invention in terms of the prior art. The Examiner is requested to contact the undersigned attorney by telephone to arrange for such an interview at the earliest possible convenience.

Information Disclosure Statement

Although a Supplemental Information Disclosure Statement is not being submitted concurrently with this Amendment and the accompanying Request for Continued Examination, Applicant is in the process of preparing a Supplemental IDS that will be submitted in due course.

Election by original presentation

The Office Action states that claims 18-35 are withdrawn from consideration as being directed to a non-elected invention. The withdrawn claims were originally presented in commonly-owned child Application No. 10/410,184, now abandoned. It is respectfully submitted that prosecution of these claims along with claims 15-17 would not place an undue burden on the Examiner. Accordingly, Applicant presents claims 18-35 for prosecution in connection with the Request for Continued Examination submitted herewith.

Claim Rejections – 35 U.S.C. § 112

Claim 16 stands rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particular point out and distinctly claim the subject matter which applicant regards as the invention. The limitation identified as being indefinite has been removed by the present Amendment. It is therefore respectfully requested that this rejection be withdrawn.

Claim Rejections – 35 U.S.C. § 102

Claims 15-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rubenstein (“Operators embrace automated systems to hire the best, reduce turnover” 1997). This rejection is respectfully traversed.

The Office Action states that the rejection is “primarily based” on the the DPDAplicant system described in Rubenstein. However, the DPDAplicant system has already been applied against and distinguished from the claimed invention. In an Office Action dated June 18, 2007, claims 15 and 16 were rejected as being anticipated by Decision Point Data, Inc. (“1999 Storeworks! Conference and Exhibition,” 13 pages, May 1999.) (referred to herein as “Storeworks!”). Claim 17 was rejected as being obvious over Storeworks! in view of another reference. The system described within Storeworks! and referred to in the Office Action is the same DPDAplicant system described in Rubenstein that is now being used to again reject the same claims. In fact, Applicant submits that Storeworks! contains more information and detail regarding the DPDAplicant system than Rubenstein does.

Among other things, Applicant argued in response to the rejection based on Storeworks! – as it has argued in response to the rejection by Rubenstein – that the DPDAplicant system

does not disclose use of questions that are validated by statistical correlation as claimed. (See 11/19/07 Amendment, pp. 9-10.) A subsequent final Office Action did not refute this argument, but rather stated that “statistically validated” was not in the claims. Applicant responded by amending the claims to require that the questions are validated by “statistically” correlating them with the statistical correlation system. (See 4/2/08 Amendment, pp. 3-6 and 11-12.) The rejection was thereafter withdrawn. (See 8/20/08 Office Action.)

The same argument that was successful in removing Storeworks! as a rejection by definition should remove Rubenstein because the rejections based on the two references apparently are based on the same DPDApplclicant system. The Office Action applies Rubenstein by citing it as disclosing benchmarking the success of hiring practices by measuring average employee retention patterns and turnover rates. However, this citation discloses only measuring average employee retention patterns and turnover rates, and has nothing to do with statistically validating questions. As with Storeworks!, Rubenstein does not disclose statistically correlating job performance ratings of a plurality of workers who were hired with previous responses given by the plurality of workers to application questions before the plurality of workers were hired as claimed. It is therefore respectfully requested that this rejection be withdrawn.

Applicant notes that the Storeworks! reference and the DPDApplclicant system are attributed to Decision Point Data. Decision Point Data is the predecessor company of Unicru, Inc., which is the predecessor of Kronos, Inc. Kronos is the assignee of U.S. Patent Nos. 7,080,057 and 7,310,626 and U.S. Application Nos. 09/921,993; 10/917,252; and 10/962,191 (the “Kronos cases”), of which the Examiner is aware. A review of Information Disclosure Statements filed in the Kronos cases indicates that at least the following documents, that will be

submitted in due course in a Supplemental IDS, are purportedly attributable to Decision Point Data: 1) Scarborough, “DPDNeurotech™,” Power Point Presentation given to prospective employer Decision Point Data (predecessor company of Unicru, Inc.) 32 pages, electronic copy provided to Decision Point Data., Dec. 1998; 2) “Interactive Interview Category Analysis Report,” DPD Applicant Report, Decision Point Data, Inc. (predecessor company of Unicru, Inc.), 1 page, Apr. 1998; 3) , “Tools & Technology,” International Mass Retail Association, 1999 Store Operations & Human Resources Conference, Decision Point Data, Inc. (predecessor company of Unicru, Inc.), 28 pages, February 2, 1999; and 4) Scarborough, “Welcome, Portland State University,” Presentation to about 15 people, Portland, Oregon, 20 pages, before May 2000. While these documents have been submitted by Kronos in the Kronos cases, Applicants are not admitting that they are prior art to the present Application. Applicants specifically reserve the right to challenge whether any of the above listed documents are prior art.

Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BP', with a long horizontal flourish extending to the right.

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